STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street 21st Floor
San Francisco, CA 94105

SUMMARY OF AND RESPONSE TO WRITTEN PUBLIC COMMENTS IN RESPONSE TO 15 DAY NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS ISSUED ON JULY 31, 2009

PAY-DRIVE (USAGE BASED AUTO INSURANCE) REGULATION

File No. REG-2008-00020 **September 2, 2009**

NOTE REGARDING PUBLIC COMMENTS AND THE DEPARTMENT OF INSURANCE'S RESPONSES: All public comments that were submitted in a timely manner in response to the 15 day notice of modifications to a text issued on July 31, 2009, are summarized in this document. The Department has responded to all of the public comments below with references to a separate companion document titled RESPONSES TO PUBLIC COMMENTS. The corresponding response or responses to each comment are indicated after each comment summary below.

3-01 Alice Bisno and Randall Farwell, Automobile Club of Southern California (ACSC)

P1, ¶2: Thanks the CDI for the considering the comments made and believes that the proposed regulation is improved.

Response: A + U.

P1, ¶2: Commenter believes insurers would more rapidly implement mileage verification if they could be allowed to file only one class plan without the need of an accompanying filing. In order to avoid abuse any insurer submitting a class plan only would have to meet the following conditions:

- The insurer is in full compliance with the auto rating factors
- The insurer demonstrates that the plan is revenue neutral and meets the weight test of the auto rating factors
- The class plan is filed within 12 months of the effective date of this regulation
- The exception applies only to the initial filing of a verified mileage plan

Response: AA.

3-02 Andrew J. Blumberg, Lee Tien, and Peter Eckersley, Stanford University, Electronic Frontier

P1, ¶1: The July 31 version of the regulations not only fails to address the privacy concerns we previously expressed, but substantially weakens some protections found in the June 14 version.

Response: U.

P1, ¶2: Section 2632.5(c)(2)(F)(i) explicitly permits an insurer to require the use of a technological device for verified mileage. A consumer should be able to participate in the verified mileage program via odometer readings collected without the use of a technological device.

Response: N.18.

P1, ¶3: Revised section 2632.5(c)(2)(F)(i)(5)(a) continues to allow insurers to use a technological device to record arbitrary information other than the location of the vehicle. Requiring collecting information only "for determining mileage driven" is so vague as to permit anything. The language must explicitly prohibit recording any information other than actual mileage.

Response: N.19.

P1, ¶4: Revised section 2632.5(c)(2)(F)(i)(5)(a) deletes the requirement that the insurer only use information collected for setting rates. This appears to permit the insurer to sell this information, for example. Nothing requires the insurer to protect the privacy of consumers in its handling of the data collected under the verified mileage program.

Response: N.1 + N.3 + N.8. The regulation was revised to refer to determining actual miles driven rather than calculating automobile insurance rates in response to earlier comments that the prior language was too broad and allowed insurers to collect more information than was necessary.

P1, ¶5: Section 2632.5(c)(2)(F)(i)(5)(b) permits insurers to use a technological device to collect location information for a variety of new purposes, such as emergency road services. No discussion of privacy protections for this information is included and this language appears to allow the insurer to record location information if the device was "multi-function" and also had a safety application.

Response: N.1 + N.3 + N.8. This language recognizes that California Insurance Code Sections 12140, *et seq*., allow insurers and motor clubs to provide such services.

P1, ¶6: The revised regulations would allow insurers to require that consumers put an undefined technological device in their cars; collect unlimited information about the driver via this device, including real-time location; and use the collected information for arbitrary purposes, including sale to third parties.

Response: U.

P1, ¶7: The odometer already present in every car is the only technological device needed to verify actual miles driven. Therefore, the commenters oppose the amendments and urge that regulations adopting their comments be adopted.

Response: U + N.6 + N.9 + N.18.

3-03 Bern Grush, Skymeter

P1: It is unclear whether proposed regulation subsection (F)(i)(5) restricts a company which is not an insurer (or motor club) from collecting or using location information.

Response: N.19 + N.20.

P1: It is unclear whether an insurer may collect mileage information through the use of a technological device, including the GPS device.

Response: N.19 + N.20.

P1: It is unclear whether an insurer may collect mileage information from a third party which collects information, including location information, from a technological device.

Response: D + N.19 + N.20.

3-04 Bernie L. Farmer, Telanon, Inc.

P1: Introductory and background

Response: U + Q.

P2, numbered paragraph 2: It is unclear whether an insurer may obtain mileage information from a third party which collects information, including location information, from a technological device.

Response: D + N.19 + N.20.

P2, numbered paragraph 1: If an insurer may obtain mileage information from a third party which collects information, including location information, from a technological device, it is unclear whether a single technological device may be used. (Rather than one device for mileage and a separate device for collecting other info)

Response: E + N.19 + N.20 + S.

PP 2-3: Background information

Response: U + Q.

3-05 Beth Givens and Tena Friery, Privacy Rights Clearinghouse; and Deborah Pierce, Privacy Activism

P1, ¶2 to P2, ¶3: The comment begins with general introductory and background information.

Response: A response is not required.

P2, ¶1: The Department's latest amendments do not sufficiently address concerns previously raised. Locational privacy rights are barely addressed.

Response: The regulations specifically provide that an insurer shall not use a technological device to collect or store information about the location of the insured vehicle.

P2, ¶2: The commenter disagrees with the Commissioner's August 3, 2009, press release.

Response: Q.

P2, ¶¶4-6: Consumers have no choice but to accept onboard technology. A driver who wants to lower premiums through a pay-as-you-drive program must agree to the insurer's terms about how mileage is verified. It is the insurer, not the driver, who chooses to have mileage verified through a technological device. This is not a reasonable choice for consumers. If the pay-as-you-drive system were to morph into a mandatory program, the choice becomes even more unreasonable.

Response: N.18. Consumers are not required to accept on-board technology. As with any other product offering, consumers can choose to purchase insurance from an insurer offering the products and/or services which the consumer finds attractive. The fact that an insurer can choose to verify mileage only through a technological device is no different than any other business plan an insurer chooses to adopt or reject. A policyholder can purchase insurance from an insurer which verifies mileage through means other than a technological device, if that is important to the consumer. Similarly, an insurer can choose to offer only six-month policies. If purchasing a one-year policy is important to a particular consumer, that consumer can reject the insurer offering the six-month policy in favor of an insurer offering an annual policy Under the regulations as proposed, verified actual mileage programs are voluntary on the part of the policyholder. Therefore, any terms, conditions, or requirements which might be part of any mandatory system, if a mandatory system is ever proposed, are, at best, speculative at this point.

P2, ¶7: Under the regulations, consumers receive no notice about the kinds of data an onboard device might collect, how or for how long that data might be stored, or the potential uses of the data. Even limiting data collection to information for determining actual miles driven does not shield collected data from a subpoena or other legal process.

Response: N.3 + N.8. Whether, and to what extent, certain technological device information may be subject to a subpoena or other legal process is governed by various statutory provisions, and cannot be changed in this rulemaking proceeding.

P2, ¶8-9: It is significant that the regulation places restrictions only on the "use" of data collected by a technological device. The implication is that technological devices may collect all kinds of data as long as the insurer only uses the data to determine actual miles. Manufacturers will not make and insurers will not provide drivers with devices, other than odometers, that record only actual mileage. The best way to protect locational privacy is not to collect the data in the first place.

Response: The regulation is clear. The regulation restricts an insurer's use of a technological device. An insurer shall only use a technological device to collect annual miles driven information, and shall not use a technological device to collect or store location information.

P3, ¶1: Because insurers may collect all manner of data, the data will be stored along with actual miles data. Data retention issues arise and there is no requirement that the data be deleted after a certain point in time.

Response: The regulations limit an insurer's use of a technological device. Such a device shall only be used to collect annual miles driven information. Data retention issues are not implicated. Laws regulating the manner in which insurers must safeguard the data they do collect are applicable.

P3, ¶2: In previous version of the regulations, data could only be used to calculate insurance rates. To delete this restriction suggests that data collected may someday be used to calculate rates based on collected data such as time and driving habits. A nurse who works the night shift may pay a higher premium than his day-shift co-worker with the same driving record. Once consumers are comfortable with an onboard device, small changes can eat into privacy protections without the driver even realizing it.

Response: The language that information collected by a technological device shall only be used to calculate automobile insurance rates was deleted in response to public comments that it was too broad and allowed for collection of driver behavior information. Factors such as time of day and driving habits may not be used as rating factors because they are not listed as approved optional rating factors adopted by regulation pursuant to California Insurance Code Section 1861.02.

P3, ¶3: The nurse described above may not realize what incremental changes are being made, how a decision was made about his premiums, or what to dispute.

Response: Regulation changes would be necessary in the situation described. Additionally, California Insurance Code Section 381.1 requires insurers to provide a specific rating information disclosure at the time of application for or issuance of a policy and in each renewal notice sent prior to the renewal of the policy.

P3, ¶4-5: Portions of an Electronic Frontier Foundation report on locational privacy are excerpted. If an insurer obtains a record of a policyholder's movements over the past year and decides to raise premiums or deny coverage based upon that record, it is not only unfair, but the policyholder may have no ability to dispute it.

Response: Current law does not allow an insurer to rate or underwrite based upon an individual's movements over a particular period of time. The regulations do not allow an insurer to obtain a record of a policyholder's movements over time. California Insurance Code Section 381.1 requires insurers to provide a specific rating information disclosure at the time of application for or issuance of a policy and in each renewal notice sent prior to the renewal of the policy. California Insurance Code Section 791.10 requires that an applicant or policyholder be provided with the specific reason or reasons for an adverse underwriting decision. California Insurance Code Sections 662 and 666 require an insurer to provide the reason for a policy cancellation.

P3, ¶¶6-7: Public acceptance of pay-as-you-drive programs depends on drivers being assured that adequate privacy protections are in place. CDI should revise the regulations so that actual mileage may not be verified by onboard technological devices. Other methods as set forth in the regulations are sufficient.

Response: N.16 + N.17 + N.18.

P4, ¶1: If onboard devices are allowed, drivers should have the choice about the method used to verify actual mileage.

Response: N.16 + N.18. Consumers can choose the insurer from which they will purchase insurance.

P4, ¶2: If technological devices are allowed, CDI should specifically prohibit the collection of any data except actual mileage.

Response: N.19.

P4, ¶3: If data other than actual mileage is collected by technological devices, drivers should receive specific notice of the kinds of data being collected as well as the potential uses of that data. Drivers should be able to turn off any extra features.

Response: N.3 + N.8 + N.19. Various laws, such as California Vehicle Code Section 9951, are applicable to vehicle sensing and diagnostic devices. CDI lacks authority to regulate such devices as requested in this comment.

P4, ¶¶4-5: If CDI adopts pay-as-you-drive regulations, CDI should issue a declaratory statement explaining why each of the amendments was made and how those amendments protect the privacy of California drivers. Neither the CDI press release nor the regulatory amendments offer any insights into CDI's rationale for making the changes that were made and how the amendments protect the privacy of California drivers.

Response: The Administrative Procedure Act rulemaking provisions require such a statement in the rulemaking file, and CDI will comply.

P4, ¶6-7: The regulations raise significant privacy concerns. The opportunity to comment on the regulations is appreciated.

Response: U.

3-06 Birny Birnbaum

P1-2 #1. Qualifications: Mr. Birnbaum reviews his qualifications and expertise with auto rating factors and Proposition 103, with which the department is very familiar.

Response: U.

P3: #2: Summary of Opinions:

- Fails to create a pre-mile pricing option for California auto insurers and auto consumers;
- Violates the intent and requirements of Prop 103 and the Government Code regarding insurance rating factors;
- Will likely lead to miles driven having less weight in the determination of premium; and
- Will lead to greater complexity and difficulty for rate analysts and legal staff of the CDI and consumer organizations to review rating plans for compliance.

Response: U. Each of the bulleted points is a brief summary of the comments that are to follow. All will be responded to individually as they are expanded upon and will be addressed separately.

P3: #3: Miles Driven as a Rating Factor Verse Miles Driven as a Pricing Option: A rating factor is a characteristic of the vehicle or consumer that is applied to a base rate to determine the consumer's premium.

Response: G + U.

CIC Section 1861.02(a) and CCR Section 2632.5 and 2632.8 requires miles driven to have more weight than any other rating factor except Driving Safety Record.

Response: G + U

P3, ¶3: A price per mile option can be developed that does not dispute the current regulatory framework that maintains the integrity of the current rating factors weighing methodology.

Response: A + G + T + U.

P3, ¶4: The 7/31 revisions continue to confuse miles driven as a rating factor with mile driven as a payment option.

Response: G + U. The regulations do not confuse Miles driven as rating factor with Miles driven as a payment option. The regulations simply permit and provide a framework for insurers that wish to offer automobile programs based on verified mileage rather than estimated mileage.

P4 #4: Benefits of Per Mile Pricing vs. Benefits of Verified Miles: A price per mile option will allow consumers to control their auto cost. Fewer miles driven will lead to less density, fewer accidents, less auto related pollution and less oil consumption.

Response: G + U.

P4, ¶2: A per mile pricing will require some form of mileage verification to either bill or rebate consumers based on actual miles.

Response: G + U.

P4, ¶3: Price per mile requires mileage verification but a verified mileage program does not require, encourage or lead to a per mile pricing option. An insured with an insurer with two mileage bands may not see a reduction in premium no matter how much they reduce miles driven.

Response: G + T + U.

P4, ¶4: Without a requirement for a maximum mileage band and no requirement for a price per mile option there is no economic incentive for a consumer to alter her amount of driving.

Response: K + L + M.2 + T.

P4, ¶5: There is no factual evidence to suggest that verified miles, without other necessary actions, will lead to fewer miles driven or any "innovation" by insurers**.**

Response: G + U.

P4, ¶6: It would be misleading to consumers to represent that a verified mileage program will reduce premiums for those who drive less when the insurers are not required to present payment options that are tied to miles driven.

Response: K.

P5, ¶1: #5: Incentives for "Innovation" in Automobile Insurance Rating: Based on these regulations, it appears that the Commissioner does not understand the problems faced by consumers because of insurer rating practices. It is the intent of Prop 103 to protect them from arbitrary and unfair rating practices.

P5, ¶2: While the Commissioner states that innovation is good and desirable, innovation in other states has led to the use of rating factors that would be considered arbitrary and unfair under Prop. 103. For example: education level, employment, homeownership, prior liability limits, inquiries (not claims) to the insurer, prior insurer, credit history, and others.

Response: G + U. This regulation does not permit any of these rating factors to be used in California.

P5, ¶3: Innovation by insurers in rating tends to lead to ultra refined rating plans using questionable factors based on mining of consumer information. Proposition 103 protects consumers from arbitrary and unfair rating practices and requires the Commissioner to approve any new rating factors. Just because there is a statistical/actuarial correlation to loss is not the sole requirement for justifying the use of a rating factor.

Response: G + M.1 + M.2 + U.

P5, ¶4: If insurers are allowed to base rating factors on actuarial evidence alone they will use rating factors that defeat the purpose of Proposition 103 and the public policy goals of making insurance available and affordable to all.

Response: G + M.1 + M.2 + U.

#6. Combining Optional Rating Factors with Miles Driven. Mr. Birnbaum posits that the premise behind combining rating factors (that the relationship to risk of loss changes when two factors are combined) is illogical and unsupported by actuarial evidence. Therefore, if the Commissioner believes there is a covariance between an optional factor and the second mandatory factor (miles driven) he should require or collect data to demonstrate the relationship.

Response: B + E + H + J.

P6, ¶1: The apparent goal of insurers in combining rating factors is to get around the factor rating requirements of Proposition 103. The same is true of "actuarial" or "cost-saving"-based discounts for mileage verification. Combining factors with Miles driven will, "at a minimum," lessen the impact of miles driven for some (and probably all) consumers by "obfuscating the role of miles driven." Allowing factors to be combined also adds complexity to rating plans and creates "huge difficulties" for the department and consumers who review the rate filings for compliance with Proposition 103.

Response: B + H. The Department believes that the disaggregation provision protects against these concerns.

#7. Mileage Verification Discounts. Since the regulation fails to require a true pay by the mile system there is no guarantee a verified mileage program will reduce driving or that drivers who drive less will move to a lower mileage band. Therefore, participation discounts for some consumers will result in surcharges for others. This will distort the miles driven rating factor.

Response: B + N.5 + V.

The regulation allows a discount if supported by "actual cost savings or actuarial accuracy." This thwarts Proposition 103 which requires that a rating factor has a substantial relationship to the risk of loss. The Commissioner has no evidence to support differential rates based on participation in verified Miles program.

Response: B + V.

P7 #8. No Requirement or Guidance for Price per Mile Option. The price per mile option merely states that insurers can do whatever complies with all applicable laws and provides no

guidance for establishing price per mile programs. Accordingly it provides no guidance in the industry and is meaningless. This is an abdication of responsibility by the Commissioner and, based on past experience, is likely to invite litigation that will slow down the implementation of price per mile policies.

Response: B + T. The Department believes it is helpful to include an express provision permitting price per mile programs, in conjunction with the other provisions of this regulation in order to encourage adoption of such programs.

3-07 Caryn Landau

P1, ¶1: Concerned with the CDI allowing insurers to require insureds to place black boxes in their vehicles.

Response: G + O.

P1, ¶2: The CDI's website states that it ensures consumers are protected. But CDI is not protecting consumers privacy by allowing the industry to invade their privacy.

Response: G + N.1 + N.2 + N.3 + N.8 + N.14.

P1, ¶3: The CDI website states it protects consumers by requiring insurers to conduct business in an honest open and fair manner. It is not known how insurers will collect, use monitor, share, or sell this information. This is not honest, open and fair and by allowing it the CDI is not aiding consumers.

Response: G + N.1 + N.2 + N.3 + N.8 + N.10 + N.14.

P1, ¶4: There are other less intrusive ways to verify mileage than requiring a black box be installed. These include a photograph of an odometer or submission of a service record.

Response: D + O.

P1, ¶5: If the black box is only to obtain mileage date the regulation should say state as much. Section 2632.5(c)(2)(F)(i)(5) leaves the type of information collected open (e.g. speed, position, braking, etc.) and only location is excluded.

Response: N.1 + N.2 + N.3 + N.10 + N.14 + N.19 + N.20.

P1, ¶6: 2632.5(c)(2)(F)(iii) insurers may provide a discount to insureds that participate in a mileage verification program but there is nothing that precludes an insurer from raising premiums on those that don't.

Response: M.2 + O + V. Auto insurers must apply to the CDI before they can raise rates and the rate application is subject to CDI review.

P1, ¶7-8: There in no language that prohibits insurers from using the information in other ways (selling or sharing) aside from calculating auto insurance rates. The commenter strongly urges the Commissioner to reject this proposal.

Response: N.1 + N.2 + N.3 + N.8 + N.14 + N.20 + O.

3-08 Christopher Gay, MileMeter Insurance Company

P1, ¶1-2: 2632.5 (c)(2)(F)(i) Commenter is concerned with vehicle installed monitoring devices. Believes that insurers could use the devices to obscure their rates and minimize the correlation of rates with vehicle miles driven by using other driving factors. Pricing should be transparent

Response: B +M.2 + N.5.

P1, ¶2: 2632.5 (c)(2)(F)(viii) Commenter believes that the use of other rating factors obscures their rates and minimize the correlation of rates with vehicle miles driven by using other driving factors.

Response: B + K + L + M.1 + M.2 + M.3 + N.5 + S.

P2, ¶1: Asks the CDI to revisit CIC Section 761 to waive the time and capital "seasoning" requirements that currently block innovation and the only reformer that offers pure price per mile.

Response: E + J + S.

3-09 Dorothy J. Glancy, Santa Clara University School of Law

P1, ¶¶1-2; P2, ¶2; P2, ¶4 to P3, ¶1: The comment begins with background and summary information and objects to the 15-day public notice periods which have been provided in connection with this rulemaking proceeding.

Response: BB.

P2, ¶1: The findings in subsection 2632.5(c)(2)(F) are not supported in the record.

Response: Q. This language was included in the June 24, 2009, proposed amended regulation text. A response is therefore not required.

P2, ¶3: The commenter objects to the undefined and unregulated "Price Per Mile Option."

Response: T. The Commissioner disagrees that these programs are unregulated. Any "Price Per Mile Option" must be specifically approved by the Commissioner before it can be used.

P3, ¶2: The commenter objects to the language allowing odometer reading from the California DMV or another governmental agency to estimate annual miles driven. This would include

access to law enforcement agencies, municipalities, and any other government agency. Moreover, this applies to estimating annual miles.

Response: The Department's regulation does not allow insurers access to data that other laws don't already allow them to access. The access is only for odometer reading data. The regulation does not authorize insurers to obtain any other information from a law enforcement agency or a municipality. Subsection (E) relates only to the mileage estimation program, which has allowed use of odometer readings to assist in estimating annual miles driven. Subsection (E) was adopted in 2006. It is unclear why there is a vast difference between using odometer readings to verify past facts and this so-called new authority to estimate annual miles driven in the future. Therefore, a more specific response cannot be provided.

P3, ¶3: Section 2632.5(2)(2)(F) now contains only the shards of the verified actual mileage program. It is now an expanded and potentially much more privacy-invasive program. The findings and benefits are again objected to, as is the fact that a new rulemaking proceeding was not commenced.

Response: The findings and benefits language were part of the June 24, 2009, proposed regulation text. Therefore a response is not required. The Department has already responded to the commenter's objections to the lack of a 45-day notice, above, and incorporates that response here. It is unclear why the commenter believes the currently-proposed verified actual mileage program is much more privacy-invasive, especially since most of the provisions of the June 24 version have been deleted in response to comments. Therefore, a more specific response cannot be provided.

P3, ¶4: Section 2632.5(c)(2)(F)(i) further expands the unilateral options of insurers regarding verifying miles driven. Consumers now have no choice regarding verification. Insurers are now authorized to determine which of the verification methods will be used, as long as it is specified in its class plan. This is unfair to consumers and may jeopardize customers' privacy.

Response: N.18. Unless otherwise prescribed by law, insurers have a choice as to the options they will provide to consumers. The change to this section makes it clear that the mileage verification method(s) an insurer will offer must be included in a class plan application and approved by the Commissioner. It is unclear how this may jeopardize consumers' privacy. Therefore, a specific response cannot be provided. However, the Commissioner notes that insurers must comply with California Insurance Code Sections 791, *et seq.*, the Department's privacy regulations, as well as all other applicable privacy laws. Consumers can decline to do business with insurers who don't offer them a mileage verification option which they find acceptable.

P4, ¶1: Insurers may now retain "vendors," but that term is not defined.

Response: That language was included in the June 24, 2009, proposed regulation text. Therefore, a response is not required.

P4, ¶2: Reference is made to the language of California Insurance Code Section 791. The July 31 text fails to take these responsibilities seriously. The public should not have to guess about the meaning of "vendor."

Response: N.7. As indicated above, the "vendor" language was included in the June 24, 2009, version of these proposed regulations. Therefore, pursuant to the provisions of California Government Code Section 11346.9(a)(3), a response is not required.

P4, ¶3: The Department's privacy regulations have not been changed since 2003. Because the second amended proposal contemplated increased collection of new types of personal information by insurers and their vendors, the Department's regulations need to keep pace. The sample disclosure clauses do not contemplate such expanded personal information collection.

Response: N.1 + N.2 + N.3 + N.7 + N.8.

P5, ¶1: This version of the regulations authorizes an insurer to impose only one means of mileage verification on customers. There is no requirement that that fact be clearly disclosed. The Department needs to require a clear statement that describes the mileage verification method and to require that such a statement be prominently placed in large type on the front of any proposed verified annual mileage program policy.

Response: N.18. California Insurance Code Section 381.1 sets forth required rating information disclosures.

P5, ¶2: Consumer disclosure is an important issue not addressed in the July 31 proposed text. At least two additional insurer requirements are imposed and need to be prominently disclosed. First, an insurer can require that an insured who chooses verified mileage for one vehicle also choose verified mileage for all vehicles insured under that policy. Second, an insurer may retroactively or prospectively adjust premiums. Regulations requiring and specifying such notice are not included.

Response: Various disclosures are already required by law, including by the provisions of California Insurance Code Sections 791, *et seq.* The Department cannot establish additional required disclosures by regulation. The language regarding premium adjustment was included in the June 24 proposed regulation text. Therefore, pursuant to the provisions of California Government Code Section 11346.9(a)(3), a response is not required. Although an insurer offering both an estimation and a verification program may require an insured who chooses verified mileage for one vehicle to choose verified mileage for all vehicles insured under the same policy, there is no requirement that all vehicles be insured under the same policy. An insured can request that different vehicles be insured on different policies. Because insurers are required to disclose rating information, it is unnecessary to require specific disclosure regarding whether vehicles will be insured on one or more than one policy.

P5, ¶3: Suggested disclosure language is provided when an insurer chooses to verify mileage using a technological device.

Response: The commenter is incorrect that the technological device is designed to continuously monitor and report the vehicle's mileage to the insurer. Different insurers have selected various reporting intervals. Additionally, please see the response set forth immediately above, which is hereby incorporated by this reference.

P6, ¶1: The suggested disclosure language is simply the minimum information that must be communicated. Additional information could also be required. The potential for consumer deception is great.

Response: As the commenter noted, disclosures would vary depending on which business method the insurer selected. Therefore, the Commissioner has determined that detailing the exact language of any notice is not practical or prudent. Insurers are required to comply with various disclosure requirements, and should do so in a manner that best serves their policyholders, consistent with the law. The Commissioner will obviously ensure that insurers do comply with all applicable requirements.

P6, ¶2: Section 2632.5(c)(2)(F)(i)(4) refers to odometer readings reported by an agent of the insured. This has no meaning and it is not clear why it is included.

Response: This language was included in the June 24, 2009, proposed regulation text. Therefore, a response is not required. However, the Department refers to its response, elsewhere in this rulemaking file, that the language allows, for example, a family member or another selected person, to report odometer readings to an insurer.

P6, ¶3: Section 2632.5(c)(2)(F)(i)(5) regarding technological devices could be harmful to consumers' privacy. Although the language appears to restrict use of technological devices, that appearance is an illusion. The restriction on collecting location information is eliminated. The comment refers to undefined motor clubs. The comment notes that insurers may require policyholders to subscribe to such services.

Response: N.19 + N.20. Motor clubs are defined in and regulated by the provisions of California Insurance Code Sections 12140, *et seq.* A consumer may not be required to purchase the services defined in California Insurance Code Sections 12144, *et seq.*

P6, ¶4: The July 31 proposal fails to recognize that the pattern of multiple locations provides the basis for tracking and profiling. Suggested language is provided.

Response: N.19 + N.20. The suggested language is unnecessary. The regulation does not authorize insurers to collect or store information about locations, profiles, or patterns of travel.

P7, ¶1: The regulatory language implies that other information, such as the regions or neighborhoods through which the vehicle is driven can be collected. The Department's privacy regulations do not specifically address how such personal information must be handled.

Response: N.19 + N.20.

P7, ¶2: The regulation uses the word "location" apparently to refer to some static position. But privacy regarding a person's whereabouts also includes the areas and regions through which a person passes. Requiring proper safeguarding of such sensitive personal information is important in protecting privacy rights. A stalker does not need to know the location of the insured vehicle, but only the usual pattern of the victim's travel. These travel patterns are not protected by the July 31 proposed regulation text. Required protection of travel profiles are absent from the proposal.

Response: By preventing collecting or storing of information about the location of the insured vehicle, the regulation, by definition, also prevents collecting and storing information about travel profiles. Although the regulation recognizes that other services which a consumer has requested may require disclosure of location information, nothing in the proposed regulation authorizes the creation of travel profiles. As indicated elsewhere in this rulemaking file, various laws, including California Insurance Code Sections 791, *et seq.*, and the Department's privacy regulations, protect the information referenced in these regulations. The Department does not have authority to impose requirements beyond the protections established in the various applicable laws.

P7, ¶3: These matters need to be addressed in either the July 31 proposal or the Department's regulations. The July 31 changes actually authorize insurers, at their unregulated discretion, to collect unspecified personal information, provided the insurer also provides other specified types of non-insurance services. It is an incentive for insurers to require policyholders to subscribe to such services. This is inconsistent with the Department's responsibilities under California Insurance Code Section 791 and the California Constitution. The absence of effective privacy regulations to control and protect this personal information, including profiles and patterns of travel, exacerbates the dangers posed to unsuspecting consumers.

Response: N.8 + N.14 + N.19 + N.20. The regulations do not allow insurers, in their unregulated discretion in the guise of offering motor club services, to collect unspecified and unprotected personal information about consumers. California Insurance Code Sections 12140, *et seq.*, as well as all other applicable provisions of law, regulates these services.

P7, ¶4: Section 2632.5(c)(2)(F)(i)6 appears to be an attempt to authorize the Commissioner to avoid formal rulemaking with regard to approval of other methods of verifying mileage. No explanation, standards, criteria, or parameters are set forth. This delegates to the Commissioner the decision to further authorize insurers to collect additional personal information. Any under the radar approval of potentially privacy-invasive methods of verifying mileage would constitute underground regulations. If that is not the intent, the section should be removed as unnecessary.

Response: N.11.

P7, ¶5 to P8, ¶1: Section 2532.5(c)(2)(F)(ii) seems intended to authorize insurers to change the cost to consumers of verified actual miles driven during the policy term, provided notice is provided in advance. This is insufficient. The content and nature of the notice are delegated to insurers. Disclosure of the amount of premium adjustments is not required. The proposal simply authorizes insurers to increase costs. To require a policyholder to pay a great deal more is unfair.

This proposal leaves policyholders in an untenable position, is unwise, and a potential financial trap. It authorizes profit-conscious insurers to sign up customers at low "teaser" rates, and then increase premiums. This insurance pricing system is unconscionable.

Response: Q. No changes were proposed to this section in the July 31, 2009, text.

P8, ¶2: Section 2632.5(c)(2)(F)(iii) now provides that policyholders shall qualify for a discount, rather than that the same discount shall be provided. No explanation is provided, but this allows insurers to offer a range of discounts that may vary depending on how mileage is verified. This section authorizes insurers to induce consumers to sign up for more privacy-invasive verification methods by offering greater discounts when more privacy-invasive methods of verification are used. This permits insurers to buy out constitutionally guaranteed rights of privacy. No explanation for this language change has been offered. This is a new regulation.

Response: This change was made in response to public comments. Because the regulation text allows for a discount based on demonstrated cost savings or actuarial accuracy, the change was designed to recognize that different methods of verification present, for example, different demonstrated cost savings to the insurer which may be passed on to the consumer. Any discount must be approved by the Commissioner, and verifying miles by means of a technological device will not necessarily result in the greatest discount. Nothing in this section authorizes insurers to induce consumers to sign up for technological device verification.

P8, ¶3: Section 2632.5(c)(2)(F)(vii) now abdicates the Department's responsibilities regarding regulating a "price per mile option." No standards, no restrictions, and no protections are provided. The Department delegates to insurers the unrestricted power to create such policies, with the only limitation being compliance with all applicable laws. The Department is shirking its responsibility to protect California insurance consumers. The Department needs to provide appropriate regulatory standards or delete this section.

Response: T.

P9, ¶1: The July 31 regulatory proposal greatly expands the options available to insurers but largely fails to provide regulatory criteria or standards. It further narrows consumer choices and exacerbates threats to privacy rights. The near absence of specific controls over personal information has neither been acknowledged nor addressed. The need for significant amendments to the Department's privacy regulations has been ignored. The Department should formally propose this proposal in a new rulemaking proceeding. There is a clear need for public discussion of this proposal.

Response: U.

3-10 Jamie Hall, John Boesel; California Secure Transportation Energy Partnership (CalSTEP); California Secure Transportation, Energy Partnership (CalSTEP); CALSTART

P1, ¶1: Introductory and background

Response: K + U.

P1, ¶2: The comment expresses support for a mandatory number of narrow mileage bands.

Response: K.

P1, ¶3: Allowing an insurer to combine mileage with optional rating factors seems likely to diminish the link between miles driven and premiums paid.

Response: H + L.

P1, ¶4 to P2, ¶1: The comment encourages the Department to review the regulations in the next few years.

Response: E + J.

3-11 Joanne B. McNabb, California Office of Privacy Protection

P1, ¶¶1-2: Introductory and background information is provided:

Response: U.

P1, ¶3: Prior comments on the September 5, 2008, version of the regulations are summarized.

Response: U.

P1, ¶4: The current version of the regulations has moved in the direction recommended.

Response: F + U.

P2, ¶¶1-2: Insurers should not be able to require drivers to install new devices that would collect more data than is necessary for the specified purpose. The personal information collected should be limited to that which is essential for the specified purpose. Permitting collection of any additional personal information beyond vehicle mileage traveled would only raise the privacy concerns of consumers and the data security risk of insurers.

Response: N.16 + N.18 + N.20.

P2, ¶3: Section 2632.5(c)(2)(F)(5) should be eliminated. Mileage can be verified with an odometer. This would avoid the additional cost to consumers of installing a new device in their vehicles.

Response: B. Odometer readings are one way an insurer may verify miles. However, the Commissioner believes that technological options should also be available for those insurers and

consumers who wish to use technology. If technology is used, the regulations limit the information which may be collected.

P2, ¶4: Technological innovations and privacy laws, including new laws in response to technological innovation are referenced.

Response: U.

P2, ¶5: In 2003, AB 213 imposed certain requirements with respect to event data recorders. In 2004, AB 2840 imposed certain requirements for rental car companies. These regulations raise the same concerns about technological surveillance of Californians in their cars.

Response: N.10 + N.14 + N.19 + N.20.

P6, ¶1: Support is indicated for the Commissioner's August 27, 2008, press release addressing privacy concerns. The regulations should prohibit the use in passenger vehicles of technological devices capable of collecting information beyond actual miles traveled.

Response: N.20.

3-12 Justin Horner and Victoria Rome, Natural Resources Defense Council

P1, ¶¶1-6: Introductory and background comments; general statements, general objections, and general objections regarding lack of environmental benefits of proposed regulation.

Response: G + U.

P2, ¶¶1-3 "Mileage Verification Alone is Not PAYD Insurance": In order for PAYD insurance to be successful it must include verification and "effective pricing" so that the pricing structure provides clear incentives to consumers to drive less.

Response: C + G + K + M.2 + M.3.

P2, ¶¶4-5 "Regulations Remove the Most Concrete Tool Tying Premiums to Miles: Minimum Mileage Bands": "Narrow mileage bands are key to establishing a clear price signal between miles driven and premiums."

Response: K + L.

P2, ¶6 "Regulations Still Rely on Voluntary Program": Program should be mandatory.

Response: B + O.

P3, ¶¶1-2 "Regulations Still Rely on Untested Incentives": Incentives are not sufficient.

Response: O + V.

P3, ¶¶3-4 "Regulations Permit Combining of Rating Factors without Analysis of Risk or Impact on VMT": No studies support the relationship between combined factors and risk.

Response: B + E + H + J + L.

P3, ¶¶5-6 to P4"Regulations Still Permit Companies To Require Technological Devices That Record Information Other Than Mileage" "NRDC recommends that in addition to the listed permitted verification methods, there be an added stipulation that an insurer be *required* to offer a 'non-technological option' (either method 1, 2, 3, or 4) for verification."

Response: B + D + N.19 + N.20 + O.

3-13 Kimberly Dillinger, PIFC

P1, ¶1: The commenter appreciates the accommodations made by the CDI in response to its comments. The suggestions offered by PIFC in this comment period have no regulatory effect and are offered to avoid potential misrepresentations.

Response: A + U.

P1, ¶¶2-3: 2632.5(c)(2)(E) Commenter believes the term smog check should be deleted. It could be interpreted that acceptable odometer readings would be limited to only those obtained for smog checks no matter from agency they are obtained.

Response: B + D. The department believes the regulation is clear on this point.

P2, ¶1: 2632.5(c)(2)(F)(i)5 It should be made clear that verification can be made by a "technological device provided by the insurer or otherwise made available to the insured that currently collects vehicle mileage information. This imports (c)(2)(D)(2) and avoids the risk of future arguments that (c)(2)(F0(i)5 incorporates other parts of (c)(2)(D), which are inherently parts of (c)(2)(D)(2).

Response: B + D + N.20.

P2, ¶2: 2632.5(c)(2)(F)(i)5(b) Commenter interprets this section as including usage by third party vendors that may be retained by a motor club or insurer for purposes of the listed services.

Response: D + G + N.7 + N.14 + N.20.

P2, ¶3: 2632.5(c)(2)(F)(iii) uses mileage estimation program and 2632.5(c)(2)(F)(iv) uses estimated mileage program. It would be prudent to conform the terms to void the risk of future misrepresentation.

Response: B.

P2, ¶4: 2632.5(c)(2)(F)(iii) All policyholders cannot qualify for a discount under the verified actual mileage program. Some policyholders will drive long miles and be subject to a higher rate rather than a discount. The commenter proposes the following language:

> …if an insurer offers a discount under section (c)(2)(F), the insurer shall not condition qualification for a discount on the method of verification used.

Response: B + V + X.

P2, ¶5: 2632.5(c)(2)(F)(iv) There is potential for confusion in that there is an overlap in determining the estimated mileage program and the verifiable mileage program. Compare 2632.5 (c)(2)(C)6 and 2632.5(c)(2)(F)(i)4 (insured-reported odometer readings); 2632.5(c)(2(E) and 2632.5(c)(2)(F)(i)3 (government agency odometer readings). An insurer using insured-reported odometer readings or government agency odometer readings as a means of estimating mileage might be misinterpreted as compelling participation in a verified mileage program. The commenter proposes adding this language at the beginning of subparts (c)(2)(C)6 and (c)(2)(E):

> Notwithstanding section (c)(2)(F)(iv)…

Response: B. The Department believes that the regulation is clear.

P3, ¶1-2: 2632.5(c)(2)(F)(v) States that an insurer "…shall make available all verification methods it offers to all insureds equally." Commenter believes that the intent is to provide that an insurer "…shall make <u>equally</u> available to all insureds all verification methods offered." and suggests that the language be amended.

Response: B + D. The proposed change may be preferable grammatically but does not appear to change the meaning of the regulation.

3-14 Lauren Navarro; Environmental Defense Fund

P1, ¶¶1-3 (incl. fn. 1&2): Introductory, background, and supportive comments. Commenter would have preferred a mandate and narrow mileage bands. However, now encourages department to "engage" companies after regulations become law, to ensure that they offer meaningful PAYD programs.

Response: K + O.

P2: The Department should monitor the results of the proposed regulation to determine whether participation in PAYD is maximized. If not, the Department should make PAYD mandatory with narrow mileage bands.

Response: E + K + O.

3-15 Lavin20@aol.com

P1, ¶¶1-3: Believes the regulations are a bad idea that will increase rates across the board. In Southern California where the distances are vast rates will soar or leisure travel (local vicinities or a trip to San Diego) will be hindered due to a fear of a rate increase. In a time of economic hardship it makes no sense to punish a safe driver with no accidents/tickets that has a longer commute than a high risk teenager. I will not vote for Commissioner Poizner.

Response: M.2 + M.3 + N.13 + O + X.

3-16 Leonard Conley, Friends of BRT

P2, ¶1: Quotes the introduction of the About Us section of the CDI web page.

Response: G + U.

P2, ¶2: The commenter is disappointed that there is no recognition of the connection between insurance pricing and climate change. They also believe that VMT and CO2 could be reduced by 8% if PPM was mandatory.

Response: M.3 + O + T.

P2, ¶3: In order to comply with AB32 a task force should be set up to develop insurance policies that will minimize "GHGe" (Green House Gase emissions?) and VMT.

Response: B + E + J.

P2, ¶4: A voluntary PPM program will not be as effective as a mandatory PPM program. The CDI should adopt changes to insurance pricing along the lines suggested in the study by the Brookings Institute.

Response: B + C + E.

P2, ¶5: Protecting California consumer from climate change will require a much greater contribution from the CDI to reach the goals of AB32.

Response: G + U.

P2, ¶6: Quotes ww.arb.ca.gov./cc/cc.htm, regarding the purpose of AB32.

Response: G +U.

3-17 Marc J. Beaulieu, Insuring Your Freedom

P1, ¶1: Commenter appreciates the Pay Drive regulations and believes that it will be beneficial to all especially motorcyclists.

Response: A + G. Under this program, insurers should be free to set up PAYD programs for motorcycles as well as automobiles.

3-18 Michael Ehrlich, PayGo by Shamir Systems

The comment is from a technology company. The comment provides data which purports to show that time-based usage has a substantial relationship to the risk of loss. The comment suggests that time-based usage, or "quality of miles," be added as a mandatory rating factor or, alternatively, be added as an optional factor in determining insurance rates.

Response: B + E + J + M.1.

3-19 Robert Kirkourian

P1, ¶1: By allowing PPM Annual Average Miles will be placed ahead of DSR and Years Driving. This goes against the sprit and intent of Prop. 103. Please stop changing how insurance is rated every 20 years. Once the public gets used to a one way it is changed and the insurers get the blame even though they didn't want it. If PPM is implemented there will be years of lawsuits. We should learn from our mistakes instead of repeating them.

Response: L + M.2.

3-20 Sam Sorich, Association of California Insurance Companies (ACIC)

P1, ¶1: Commenter believes the revisions to the regulations improve the effectiveness and efficiency and makes them more attractive to consumers and insurers.

Response: A + U.

P1, ¶2-3: Commenter has three additional comments. First, 2632.5 (c)(2)(F)(i)5 should be clarified to allow information collected by a technological device to be used to assist an insurer in handling an auto accident claim as allowed under Vehicle Code Section 9951. Commenter proposes the following language:

> c. Nothing in this section shall prevent an insurer from retrieving and using data from a recording device pursuant to Vehicle Code Section 9951

Response: B.

P1, ¶4: 2632.5 (c)(2)(F)(i)5 It should be clarified that the regulations are not intended to affect entities not regulated by the CDI. Commenter proposes the following language:

d. Nothing in this section is intended to limit the use of a technological device to collect information by any entity not regulated by the Department of Insurance.

Response: B + N.20. Vehicle Code section 9951 gives no special rights to insurers. Insurers are expected to comply with that section.

P1/2, ¶5: 2632.5 (c)(2)(F)(vi) mandated that a mileage estimation and verified mileage program must be included in one class plan. The provision should give the insurer the choice of filing a separate class plan. Commenter proposes the following language:

vi. An insurer offering both a mileage estimation and a verified actual mileage program ~~shall~~ may include both programs in one class plan.

Response: B. The Department believes it is best to require a single class plan. Based on other comments, it appears that most or all insurers would prefer to file a single class plan.

3-21 Todd Foreman, Pamela Pressley; Consumer Watchdog

P1, ¶1: Introductory, background and generally supportive comments.

Response: A + G + U.

P1, ¶2: The commenter objects to the absence of mandatory mileage bands and suggests that the proposed regulations violate Proposition 103.

Response: G + K + L + M.2 + U.

P1, ¶3 (continuing to top of page 2): This comment is a general objection and objects to the Department not implementing previous comments. The comment also generally states the proposed regulation allows insurers too much flexibility, are not specific enough, and do not provide sufficient consumer protections.

Response: G + U.

P2, ¶1: General objection to proposed regulations – commenter supports a working group instead.

Response: B + E + J + Q.

PP2-3: (This comment is a repeat. It was previously raised in Consumer Watchdog's July 9, 2009 comment letter – beginning on page 3 and ending at the top of page 5.) "The July 31st Regulations Contain Substantive Changes that Require a Full 45-day Notice Period and a Public Hearing": The changes were not "sufficiently related" and the public was not provided adequate notice. Specifically, the Price-Per-Mile provision and the provision allowing the combination of the second mandatory rating factor with optional factors are not related to the original text.

Response: BB.

PP3-5: "The Proposed Discounts Are 'Rating Factors,' Which Must Be Adopted 'by Regulation' and have 'a Substantial Relationship to Risk of Loss" "Ad-Hoc Discounts Violate the Procedural Requirement to Adopt Rating Factors by Regulations" (The comment is revised from a similar comment in Consumer Watchdog's July 9, 2009 comment letter).

Response: Q + V. The referenced discount is not a rating factor, but is adopted by regulation in this rulemaking proceeding.

PP5-6: "There Is No Evidence that Enrollment in a Verification Program Has a Substantial Relationship to the Risk of Loss and Use of Any Such Verification Discount Would Be Unfairly Discriminatory." (The comment is slightly revised from a similar comment in Consumer Watchdog's July 9, 2009 comment letter)

Response: Q + V + Z.

P6: "**The Discounts Would Violate the Good Driver Discount Provision of Proposition 103."** (The comment is slightly revised from a similar comment in Consumer Watchdog's July 9, 2009 comment letter)

Response: Q +Y.

PP6-7: "**The Illegal Discounts Are Unlikely to Encourage Driving Less**" especially since the mileage band requirements have been removed from the regulations. (The comment is slightly revised from a similar comment in Consumer Watchdog's July 9, 2009 comment letter)

Response: D + K + O + Q.

P7: "The Provision for Combining Optional Rating Factors with Miles Driven Violates the Language and Intent of Proposition 103" (The comment is slightly revised from a similar comment in Consumer Watchdog's July 9, 2009 comment letter.)

Response: H + Q.

P7, fn7: Regarding (c)(2)(F)(viii), "The regulations are not clear whether this permission for 'an insurer employing verified actual mileage' to use different rating factors is for all policyholders or verifiers only."

Response: Q.

PP8-9: "The July 31st Regulations Contain an Impermissibly Vague 'Price Per Mile Option,' Which Fails to Provide Any Guidance to Insurers, Consumers, or Department Staff and Likely Violates the Statutory Requirement for 'Clarity' of Regulations. Also, Department staff will be required to evaluate each program on a case-by-case basis.

Response: N.11 + T.

P9: "The July 31st Regulations Remove the Single Provision [Maximum Mileage Band Ranges] Likely to Accomplish the Stated Goals of the Rulemaking and Remove Crucial Consumer Protections." These were the only provisions that environmentalists, PAYD advocates, and consumer groups agreed would further the goals of the rulemaking, even though the language proposed did not go far enough. The use of prescribed mileage bands is the best way to more closely tie premiums to miles driven in compliance with Proposition 103. Specified language is suggested.

Response: K.

PP9-10: This comment restates Consumer Watchdog's suggestion for a "Green Seal of Approval" criterion appearing on page 10 of their July 9, 2009 comment letter.

Response: B + E + J.

PP10-11: "**The July 31st Regulations Appear to Remove Consumer Privacy Protections for Information Collected Via a Technological Device**" Instead of limiting the information collected to actual miles driven, the regulation allows insurers to collect information for determining actual miles driven, which is unlimited in scope and time. The regulation is also unclear as to how insurers can use the information collected. There is no requirement that policyholders be notified as to what information is being gathered and for what purpose. Suggested language is proposed.

Response: N.2 + N.3 + N.8 + N.9 + N.10 + N.14 + N.19 + N.20.

P11: Regarding (c)(2)(F)(v): "The Removal of the Equal Marketing Requirement Will Encourage Redlining and Limit Success of the Program" "By allowing insurers to market their verification programs to one segment of the population to the exclusion of another, this revision will allow insurers to market only to those drivers who they want to enroll in the verification program."

Response: The Department disagrees with the comment. The final language of the referenced section states as follows: "An insurer employing verified actual mileage pursuant to section (c)(2)(F) shall make available all verification methods it offers to all insureds equally. No insurer shall offer or use a verification method that is not uniformly offered to the public." This provision does not encourage redlining or discrimination – on the contrary, it discourages redlining and discrimination. The changes were made in response to public comments on the prior regulatory language.

PP11-12: "IV. The July 31st Regulations Give All the 'Choice' to Insurers and Fail to Offer Meaningful Choice to Policyholders, Which Will Stifle Consumer Participation." "[I]t appears that an insurer can choose a single verification methodology and demand that a consumer who wishes to participate in the verification program use that methodology."

((c)(2)(F)(i).) "There is no requirement that the insurer offer more than one methodology." A previous suggestion is reiterated.

Response: N.18.

P12, ¶2: The regulations include a new provision that permits insurers to require a policyholder who chooses verified miles for one vehicle to place all vehicles in the verified miles program, which will stifle consumer participation. A policyholder should be able to place only one vehicle in the program.

Response: The regulation merely provides that an insurer may require an insured who chooses verified mileage for one vehicle to choose verified mileage for all vehicles insured under the same policy. Nothing in this section prevents a policyholder from insuring different cars on different policies.

P12: Concluding paragraph. The regulations do not accomplish the goals of the rulemaking. The regulations should more closely tie reductions in mileage to reductions in premium. Three specified problems with the regulations are summarized.

Response: U.